

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE TOWN OF FAIRFAX, CALIFORNIA

These Comments are filed by then Town of Fairfax, California, a member agency of the Marin Telecommunications Agency (“MTA”). These Comments are filed to provide the Federal Communications Commission (“FCC”) with an understanding of how local franchising operates within the jurisdiction of the MTA and its impact on the Town of Fairfax. The experience of the Fairfax and the MTA demonstrates the importance of preserving local franchising of incumbent cable operators and new entrants in order to promote advanced video programming services; ensure universal service without discrimination based on income; deliver Public, Education, and Government programming to the local community; create Institutional Networks; provide consumer protections; and manage the local public right of way. The MTA is a member of the National Association of Telecommunications Officers and Advisors (“NATOA”), and we understand that NATOA will be more broadly addressing the important legal and policy issues raised by this Notice of Proposed Rulemaking on behalf of its members. The MTA urges the FCC to preserve local franchising for not only incumbent cable operators but also new entrants, and to not limit the existing authority of local public agencies to secure the types of community benefits and protections described by these comments.

Cable Franchising in Our Community

Community Background

Fairfax is a town of approximately 7500 residents located in Marin County, California. Fairfax has very limited resources for its municipal budget as it has a very small commercial business tax base. Fairfax is renowned for its natural beauty and the tolerant spirit of its residents. The MTA is a joint powers authority consisting of the County of Marin and ten cities and towns in Marin County, California. Marin County is located across the Golden Gate Bridge from San Francisco and contains both urbanized and rural areas. The jurisdiction of the MTA includes about 190,000

residents and 64,000 cable subscribers. When the JPA was formed in 1998, the eleven individual cable franchises between the cities and towns and county with TCI were transferred to the MTA. In addition, a separate franchise covering unincorporated territory that was granted by the County to Chambers Cable was transferred to the MTA as was another franchise granted by the County to Horizon Cable that served another unincorporated portion of Marin County. The power to grant all future franchises was delegated to the MTA by its member agencies, including Fairfax. The result of the creation of the MTA was the streamlining of the franchise granting and renewal process in Marin County. Rather than having to deal with eleven separate entities, cable providers and other telecommunication companies subject to a local franchise only have to negotiate with the MTA. Also, the MTA coordinated the adoption of uniform right of way management standards that apply to all private users of public streets, including telecommunications providers, throughout Marin County. The purpose of these regulations was to eliminate inconsistent right of way management procedures and standards between the multiple local public agencies in Marin County and to streamline the encroachment permit process for telecommunication providers.

The MTA's Franchising Process

The communities in Marin County have granted cable franchises, renewals and transfers since the early 1960's. Three franchises are currently administered by the MTA. These are the Comcast franchise (previously held by AT&T, TCI and Viacom) that is currently subject to renewal negotiations; the Comcast franchise (previously held by AT&T and Chambers) that expires in 2008; and the Horizon franchise that expires in 2011. Neither the MTA nor any of its member agencies has ever denied a cable franchise application.

After Comcast gained control of the AT&T franchise, the MTA conducted a comprehensive community needs assessment that included a public opinion survey and community meetings. Public meetings also were held on the needs assessment when it was completed and presented for public review and comment. Considerable information, including public testimony, was received by the MTA Board on not only the community's PEG and I-Net needs but also on customer service satisfaction. Comcast cooperated with the MTA's staff and consultant in the preparation of the needs assessment and made no objections to the scope of the study or the manner in which it was conducted. The needs assessment turned out to be a very valuable tool in facilitating the negotiation of a franchise renewal. Although the franchise renewal has not yet been completed, the parties are working to finalize the renewal agreement within the next thirty days and submit the agreement to the Board for public hearing and adoption. The franchise renewal agreement will address the following important community benefits:

- Provides for the continued payment of a franchise fee of 5% of gross revenues based on a mutually agreed upon broad definition of what constitutes gross

revenues. These revenues provide critical general fund revenues for the local public agency members of the MTA. Fairfax received over \$88,000.00 in cable franchise fees for the fiscal year 2005-2006. For a small town like ours, this represents a significant contribution to our very stretched local budget.

- Provides adequate channel capacity for PEG programming.
- Provides substantial PEG access capital support that will permit the MTA to create a regional media center that can be used by the public, schools and government. Currently, Comcast operates an undersized PEG access media facility with outdated equipment.
- Requires the construction of an Institutional Network that will connect governmental buildings and schools throughout Marin County for data and video communications that will enhance educational programs and opportunities for the County's students, establish improved information links between government agencies and buildings and the public, and allow for the transmission of video programming from City Halls and the County Civic Center to cable subscribers.
- Establishes a local override capability, using mutually agreed upon security protocols, to deliver emergency messages in cases of local disasters or other threats to public safety. The importance of such local override capability was underscored not only by the devastating hurricanes of last year but also the severe local flooding that occurred in Marin County this past New Years Eve. Fairfax, in particular suffered over \$5,000,000.00 in flood damage and our public safety buildings were inundated.
- Requires compliance with all applicable building and other technical codes for the protection of the public safety, issuance of construction bonds when major work is done on public streets, and maintenance of comprehensive insurance policies to protect against losses to public agencies and private property owners due to damages caused by the operation of the cable system.
- Requires a centrally located local office to handle subscriber billings and customer service needs and complaints.
- Implements customer service standards to ensure that telephones are timely answered, service calls are timely made, and customer service problems are promptly addressed and remedied.
- Provides standards for the extension of service to new residences and requires nondiscriminatory service to be provided throughout the franchise area.

Competitive Cable Systems

After its formation, the MTA encouraged video programming overbuilders to come to Marin County and provide competitive video services. In the past, no overbuilders such as RCN showed an interest in Marin. During January 2006, the MTA staff was contacted by a representative of AT&T regarding the implementation of Project Lightspeed. The MTA looks forward to negotiating a franchise agreement with AT&T to deliver competitive land-line video programming to Marin residents. The MTA will commence these negotiations as soon as AT&T is ready to meet. Since the MTA already has completed an up-to-date needs assessment, this part of the franchising process will not need to be duplicated and a franchise agreement can be negotiated promptly. Further, within the jurisdiction of the MTA (that includes ten cities and towns and the County), AT&T will be required to obtain only one franchise.

Conclusion

The local cable franchising process functions well for the Town of Fairfax. Our joint powers authority, the MTA, has developed a streamlined franchise process that allows both the incumbent cable operator and new entrants to obtain a single franchise that covers multiple jurisdictions. Local franchising makes it possible for the MTA to secure community benefits and protections that are tailored to local community needs and interests. At the same time, existing federal and state law ensures that excessive requirements are not imposed and that competing providers are treated fairly and without discrimination.

The elected officials of Marin County believe that they have found an effective governance balance in creating the MTA where several small jurisdictions have joined together to administer local cable franchising in a way that preserves local public participation and addresses local community needs and interests. Moving cable franchising to the state or federal level would result not only in the loss of local public participation but also in the establishment of uniform franchise standards that are not responsive to community needs and interests.

The Town of Fairfax respectfully requests that the FCC not take any action that would further limit local government authority over cable franchising or otherwise impair the operation of the local franchising process as provided under existing federal law for both incumbent cable operators and new entrants.

Respectfully submitted,

Town of Fairfax, California
By Larry Bragman, Vice Mayor

LB:ja

cc: NATOA, info@natoa.org
John Norton, John.Norton@fcc.gov
Andrew Long, Andrew.Long@fcc.gov